IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7010 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HASHMUKH CHANDUBHAI PATEL (BATALO)

Versus

POLICE COMMISSIONER VADODARA

Appearance:

1. Special Civil Application No. 7010 of 2004

MR HARSHAD K PATEL for Petitioner No. 1

MS HB PUNANI, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 07/12/2004

ORAL JUDGEMENT

1. Heard ld. counsel Mr. Harshad Patel for the petitioner. By this petition under Article 226 read with Articles 21 & 22(5) of the Constitution of India, the petitioner detenu has challenged the legality and

validity of the order of detention dated 25.05.2004 passed by the Police Commissioner, Vadodara City in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) against the petitioner-detenu. The petitioner detenu has been branded as "boot-legger" as defined under Sec.2(b) of the PASA Act.

2. The grounds for detention supplied to the detenu petitioner indicate that for recording subjective satisfaction, the detaining authority has considered the fact of registration of three criminal offences punishable under the Bombay Prohibition Act. In first two offences, he was found involved in the offences punishable under Sections 66B, 65E of Bombay Prohibition Act whereas in the third offence, he was found involved in the offence punishable under Sections 66B, 65E and 81 of the Bombay Prohibition Act. The first offence was registered on 30.12.2000, the second offence is registered on 06.04.2004 and the third offence was registered on 24.04.2004. So, it can be said that there is a gap of about four years between 1st and 2nd offence and there is a gap of about more than 3 months between 2nd & 3rd offence. The order of detention is passed on 25.05.2004. Thus, there is also delay of about 1 month in passing the order of detention. The detaining authority has also placed reliance on the facts stated by two witnesses in the statement recorded by the sponsoring authority on 18.05.2004 and 19.05.2004. Both these statements have been verified on 20.05.2004 and the impugned order is passed on 25.05.2004. There is no justifiable explanation coming forward by way of reply affidavit. So, it is rightly argued by ld. counsel Mr. Patel that on the ground of delay in passing the order of detention, impugned order of detention requires to be quashed and set aside as such order can not sustain in the eyes of law. On the contrary, it gives an impression that the sponsoring authority was not even serious to put up the case to have favourable orders from the authority concerned.

3. The next ground pressed into service by the ld. counsel for the petitioner is that representation dated 05.06.2004 though decided on 08.06.2004 by the detaining authority as submitted by ld. AGP Ms. Punani, the same is not communicated to the detenu immediately. Till the date of petition, the petitioner was not aware about the decision on the representation. Communication has reached the jail authority on 14.06.2004. Therefore, there is a delay which has remained unexplained in

communicating the decision on the representation and that would affect adversely the legality and validity of the order of detention, in view of settled legal position as propounded in number of decisions. So, on this ground also, order of detention requires to be quashed and set aside.

4. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 25.05.2004 passed by the Police Commissioner, Vadodara City is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

[C. K.BUCH, J]

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